

# EXHIBIT 9

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 IN RE:

18 MD 2865 (LAK)

4 CUSTOMS AND TAX ADMINISTRATION  
5 OF THE KINGDOM OF DENMARK  
6 (SKAT) TAX REFUND LITIGATION,

Conference

7 -----x  
8 New York, N.Y.  
9 October 5, 2021  
10 10:40 a.m.

11 Before:

12 HON. LEWIS A. KAPLAN,

District Judge

13 APPEARANCES

14 HUGHES HUBBARD & REED LLP  
15 Attorneys for Plaintiff SKAT

16 BY: MARC WEINSTEIN  
17 CAROLYN HARBUS  
18 WILLIAM MAGUIRE

19 KOSTELANETZ & FINK, LLP  
20 Attorneys for Defendants Azalea Pension Plan, et al.

21 BY: SHARON MCCARTHY  
22 NICHOLAS BAHNSEN

23 WILMER CUTLER PICKERING HALE AND DORR LLP  
24 Attorneys for Defendants Avanix Management LLC, et al.

25 BY: ALAN SCHOENFELD  
ALLISON STODDART

POULOS LoPICCOLO P.C.  
Attorneys for Defendants Roger Lehman, et al.

BY: JOSEPH LoPICCOLO

WILLIAMS & CONNOLLY LLP

Attorneys for Defendants Sander Gerber and Sander Gerber  
Pension Plan

BY: AMY MCKINLAY

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1 that leaves approximately ten. Mr. Ben-Jacob's deposition is  
2 scheduled for next week, Monday and Tuesday.

3 THE COURT: Are the other nine the Danish witnesses,  
4 or that's something else altogether?

5 MR. WEINSTEIN: That's something else altogether. I  
6 can give your Honor an update on that as well.

7 THE COURT: We'll get to that.

8 Who are the other nine?

9 MR. WEINSTEIN: So there are -- there's a 30(b)(6)  
10 witness from ED&F that is scheduled for later this week, your  
11 Honor. There are a few defendants who, for health or other  
12 reasons, had not been able to be deposed. We're still checking  
13 if that's the case.

14 I just can give you names. Gavin Crescenzo had been  
15 stationed in Afghanistan for a long time. So we have inquired  
16 to see if he is back and available for deposition.

17 Kevin Kenning has had health issues.

18 THE COURT: Kenning?

19 MR. WEINSTEIN: K-e-n-n-i-n-g. So we've agreed to  
20 just put that off until he's physically able to be deposed.

21 There are two other defendants, Mr. Gerber and  
22 Mr. Burns, where there's been discussion with counsel as to  
23 whether we would need to take their deposition, because we  
24 believe we can actually resolve those cases.

25 As far as named defendant depositions go, that is it

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1 for those who have not been deposed at all. There are one or  
2 two that we believe we will need to continue their deposition,  
3 one by agreement and one not yet.

4 THE COURT: So the end is in sight with respect to  
5 your depositions, is that right?

6 MR. WEINSTEIN: Yes. There are also some nonparty  
7 depositions that we've noticed for the end of October. So we  
8 are attempting to complete all depositions by the end of  
9 October.

10 THE COURT: Now, at one point I was told the  
11 defendants, which I take to be the defendants generally, wanted  
12 to take ten depositions, and then there was some separate issue  
13 relating to Goldstein with respect to ED&F. Can somebody bring  
14 me up to date on that?

15 Thank you, Mr. Weinstein.

16 MR. WEINSTEIN: Sure. Your Honor, with respect to the  
17 defendants' requested depositions, so over the past two weeks,  
18 prior to this week, six of those depositions were taken in  
19 Denmark.

20 THE COURT: That's six out of the nine?

21 MR. WEINSTEIN: Right. We had the remaining three set  
22 for next week. The defendants informed us yesterday they were  
23 withdrawing two of those. So there is one left to go that is  
24 scheduled for next Friday. So, as far as I know, that does it  
25 for defendants' depositions of SKAT witnesses.

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1 I will turn it over to Mr. Goldstein's counsel with  
2 respect to their notices.

3 THE COURT: Before we get to Mr. Gold- --

4 MR. WEINSTEIN: Kaplan.

5 THE COURT: Forgive me for not being able to remember  
6 all the names at first. Mr. Kaplan. I ought to be able to  
7 remember that, right? Can't have too many good Kaplans.

8 Putting aside, Mr. Kaplan's clients, that takes care  
9 of all the defendants' depositions, is that right?

10 Ms. McCarthy, do you speak for the multitude?

11 MS. MCCARTHY: I'll speak, your Honor. Yes, it does  
12 take care of defendants' depositions.

13 Your Honor, I just have one point to make here.  
14 Mr. Weinstein just mentioned that SKAT has issued subpoenas for  
15 nonparties, and those depositions are scheduled to take place,  
16 according to their notices, before the end of October.

17 Your Honor, we agreed with SKAT on a June 30 discovery  
18 cutoff. So we just received notice on Friday of three of those  
19 four depositions. We do not believe that that's appropriate  
20 for SKAT to be continuing to issue notices of subpoena past  
21 June 30. We agreed with SKAT that they could go past June 30  
22 for depositions of defendants, and they agreed that we could  
23 continue with our depositions in Denmark that we were  
24 authorized to take. Beyond that, we believe discovery closed,  
25 according to our agreement, on June 30. We ask the Court to

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1 enforce that.

2 THE COURT: Who are the nonparties, Mr. Weinstein, and  
3 why now?

4 MR. WEINSTEIN: Yes, so the four nonparties, your  
5 Honor, are all attorneys at Arnold & Porter, which is  
6 Mr. Ben-Jacob's law firm.

7 A number of reasons for why now. We still, to date,  
8 have not been able to take Mr. Ben-Jacob's deposition. In his  
9 recent answer to the most recent complaint against him, he  
10 alluded in an introductory statement to the fact that he was  
11 relying on work that others in his firm or advice that others  
12 in his firm provided to the defendants. So we need to know  
13 what they're going to say, and we still don't know what he's  
14 going to say about that other than that.

15 In addition, as a result --

16 THE COURT: And earlier there was a whole privilege  
17 assertion as to all of the Arnold & Porter stuff.

18 MR. WEINSTEIN: Correct. And as your Honor noted that  
19 one of the issues there was your Honor assigned down to the  
20 magistrate judge, and that decision went in our favor. So  
21 there was an additional large, voluminous production of  
22 documents over the summer --

23 THE COURT: Yes.

24 MR. WEINSTEIN: -- with internal communications at  
25 that firm.

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1 THE COURT: OK. Ms. McCarthy, I understand your  
2 irritation, but I think the explanation is perfectly  
3 reasonable. Although I will, as to depositions, enforce your  
4 agreement, as respects nonparties, I will not do so with  
5 respect to these four depositions. I think there are  
6 extenuating circumstances.

7 MS. MCCARTHY: Your Honor, just one point. I just  
8 want to point out, though, we gave all the billing records in  
9 March of this year to SKAT. They knew who all the people were.  
10 They could have noticed depositions. There's really no basis  
11 for this delay.

12 But I understand where the Court is -- where you are  
13 on this. Can we ask, though, that the Court require that  
14 everything be done by October 31, then, as far as these  
15 nonparties?

16 THE COURT: Well, look, in principle, sure, but one  
17 learns in time that somebody gets hit by a car, somebody gets  
18 COVID, there are sometimes extenuating circumstances. So,  
19 obviously, they ought to be done by the end of October, but if  
20 there's some good reason why something can't be done by the end  
21 of October, I'll listen to it.

22 MS. MCCARTHY: Thank you, your Honor.

23 THE COURT: That takes care, then, of depositions.

24 I understand the debate about the request for  
25 admissions and interrogatories. My experience is nobody ever